

Multimatic Products, Inc. and Industrial Trade Union Local 231, International Union of Dolls, Toys, Playthings, Novelties and Allied Products of the United States and Canada, AFL-CIO.
Case 29-CA-6253

August 13, 1982

ORDER REMANDING PROCEEDING

BY MEMBERS FANNING, JENKINS, AND
TRUESDALE

On January 30, 1981, Administrative Law Judge Jesse Kleiman issued his Decision in this proceeding.¹ Thereafter, Respondent filed exceptions and a supporting brief, alleging, *inter alia*, that the Union had engaged in fraudulent conduct, and also that Regional Office personnel have engaged in improper conduct with respect to this proceeding. On August 28, 1981, the Board issued a Notice To Show Cause why this proceeding should not be remanded to the Administrative Law Judge for the purpose of adducing further evidence and making appropriate findings with respect thereto, concerning Respondent's allegations of fraud on the part of the Union, as well as Respondent's allegations of improper conduct by Regional Office personnel, and how that conduct, to the extent engaged in, affects the validity of the Administrative Law Judge's rulings, findings, conclusions, and recommended Order. All parties filed responses to the Notice To Show Cause.²

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the Decision of the Administrative Law Judge in light of the exceptions and briefs, as well as responses to the Notice To Show Cause, and has decided, based on an evaluation of the available evidence, to remand the proceeding herein to the Administrative Law Judge for the purpose of adducing further evidence and making appropriate findings with respect thereto, concerning Respondent's allegations of fraud on the part of the Union, as well as Respondent's allegations of improper conduct by

Regional Office personnel, and how that conduct, to the extent engaged in, affects the validity of the Administrative Law Judge's rulings, findings, conclusions, and recommended Order.

The Administrative Law Judge is instructed to make credibility resolutions, findings of fact, and conclusions of law, and to reevaluate, if necessary, earlier credibility resolutions, findings of fact, and conclusions of law in light of evidence already received, and any new evidence adduced at the second reopened hearing.

Our dissenting colleague would summarily affirm the Administrative Law Judge in part and reverse in part without providing a supporting rationale. Member Zimmerman makes the naked assertion that the hearing we direct "is not likely to affect the validity or invalidity of the Administrative Law Judge's [unfair labor practice] conclusions." We completely disagree with the dissent's approach.

We begin by pointing out that the Administrative Law Judge failed to make any significant findings concerning the evidence of fraud and misconduct presently in the record. We also note, based on the responses to our Notice To Show Cause, that the record evidence relating to the alleged fraud and misconduct is far from complete. In sum, at this point in the proceeding, we are dealing with allegations and testimonial assertions, not credited evidence. Adoption of the dissent's approach would require premature findings by us, both as to the allegations of fraud and misconduct themselves, as well as to the extent that any such fraud and misconduct may have affected the validity of the Administrative Law Judge's unfair labor practice conclusions. In addition, we would have to re-rationalize or reverse the Administrative Law Judge's credibility resolutions based on those premature findings. This we decline to do. Unlike our dissenting colleague, we prefer to deal with hard facts, rather than traffic in speculation. We therefore reject Member Zimmerman's position that we need examine these allegations no further.

Furthermore, the Board acts in the public interest to enforce public, not private, rights. *National Licorice Company v. N.L.R.B.*, 309 U.S. 350 (1940). Indeed, we cannot emphasize strongly enough that serious allegations have been made, not only that a party to an unfair labor practice proceeding may have grievously abused the processes of this Agency, but also that personnel of this Agency may have somehow, wittingly or unwittingly, played a role in that abuse. Thus, the public interest and the public trust in this Agency are at stake. It is therefore imperative that a full and open hearing be had concerning such allegations, so that all

¹ The Administrative Law Judge concluded that Respondent violated Sec. 8(a)(1) and (3) of the Act by the following conduct: threats, interrogation, creating the impression of surveillance, promise of benefit, urging employees to allow Respondent to sponsor a labor organization of its own choosing, and discharging and failing to reinstate six employees, all in response to their union activity. The Administrative Law Judge further concluded that Respondent's unfair labor practices were so serious and substantial so as to preclude the holding of a fair election, and that a bargaining order was therefore warranted under *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575 (1969).

² The Charging Party filed its response on September 18, 1981, and the General Counsel and Respondent filed their responses on October 5 and November 3, 1981, respectively.

the evidence may be brought to light. Accordingly, we cannot disagree strongly enough with our dissenting colleague, who views such proceedings as having "no apparent [purpose]." The apparent purpose herein is nothing less than the integrity of the administrative and judicial process, and of this Agency.

Accordingly,

It is hereby ordered that the above-entitled proceeding be remanded to Administrative Law Judge Jesse Kleiman who shall take such action as is required in accordance with this Order.

IT IS FURTHER ORDERED that the Administrative Law Judge shall prepare and serve on the parties a supplemental decision containing credibility resolutions, findings of fact, conclusions of law, and recommendations to the Board, and that, following service of the supplemental decision on the parties, the provisions of Section 102.46 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, shall be applicable.

MEMBER ZIMMERMAN, dissenting:

I cannot join my colleagues in their decision to remand this proceeding. I would affirm the Administrative Law Judge's conclusions as to Respondent's violations of Section 8(a)(1) of the Act, and the Administrative Law Judge's conclusions that Respondent violated Section 8(a)(3) of the Act in discharging and failing to reinstate employees Dominick Lauriano, Jorge Arias, and Luz Fuentes, and by failing timely to reinstate employee Eileen Darcy. Based on the record evidence, I would not affirm the Administrative Law Judge's conclusion that employee Steven Ezegehan was constructively discharged, or that Respondent violated Section 8(a)(3) of the Act by discharging Maria Bolta Vazquez. The outcome of any further evidentiary hearing on the alleged fraud by the Charging Party and improper conduct by counsel for the General Counsel is not likely to affect the validity or invalidity of the Administrative Law Judge's conclusions in the above-noted unfair labor practice mat-

ters. Thus, I see no reason for the Board not to resolve those matters now.

I also find that the record fails to support the Administrative Law Judge's conclusions that the Charging Party's secretary-treasurer and paid organizer, Hector Lopez, was unlawfully discharged, and that the Charging Party had majority support within the unit. The *existing* evidence of fraud by the Charging Party only serves to compound the already fatal evidentiary shortcomings in regard to the Administrative Law Judge's conclusions about Lopez' discharge and the Charging Party's majority status, and I therefore see no reason for the Board to await the development of *additional* evidence of such fraud before finally resolving these matters. Since my colleagues insist on prolonging these proceedings, to no apparent end, I dissent.³

³ My colleagues perceive my opposition to their remand as an all-out assault on "the public interest and the public trust in this Agency" and the "integrity of the administrative and judicial process." To the contrary, I believe that deciding the unfair labor practice issues in this case on the record before us will preserve those interests. I simply do not see—nor have my colleagues explained—how those interests will be safeguarded by remanding this case to the same Administrative Law Judge who, having already been made aware in the reopened hearing of the copious evidence of the Charging Party's fraud, was no more than "bothered and disturbed by . . . the Union's questionable conduct." Moreover, I fail to see how the Charging Party's fraud in soliciting authorization cards could taint the evidence adduced through employee witnesses concerning the alleged incidents of 8(a)(1) and (3) discharges which I would find. As to those issues, Respondent twice had an opportunity to submit evidence, the second time with knowledge of the fraud, at which time it failed to produce any connection between the fraud and the testimony of these witnesses. Similarly, I fail to perceive how the conduct of the General Counsel's representative in handling the fraudulent matters will alter such findings. If, as it appears, Respondent committed unfair labor practices, then the Charging Party's wrongdoing affords it no defense to such conduct. As for the unfair labor practices which directly hinge on the Charging Party's perpetrated fraud, I would, as noted, reject a bargaining order and an 8(a)(5) finding, and the finding that Hector Lopez' discharge was unlawful. Such actions will best vindicate the public interest in this case. Rather than ignoring the evidence of fraud, I would act on it, which my colleagues, as yet, are unwilling to do. The Charging Party's fraudulent conduct could also be referred to appropriate authorities for possible prosecution, and the conduct of counsel for the General Counsel can be referred to the General Counsel for investigation and for any disciplinary action. Thus, I do not oppose continued investigation of the alleged misconduct on the part of the Charging Party and counsel for the General Counsel in this case. But such a continued investigation can be conducted in a separate proceeding. Resolution of the unfair labor practice issues in this case requires no further investigation into the instant allegations of misconduct.